

DAVID GERARD JEEP,)
)
Plaintiff,)
)
v.) No. 4:09CV1858 JCH
)
LYLE HENDERSON, et al.,)
)
Defendants.)

This matter is before the Court upon the motion of David Jeep (registration no. 36072-044), an inmate at St. Charles County Department of Corrections, for leave to commence this action without payment of the required filing fee [Doc. #6]. For the reasons stated below, the Court finds that plaintiff does not have sufficient funds to pay any portion of the filing fee. Furthermore, based upon a review of the complaint, the Court finds that the complaint should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the

greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Plaintiff has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. A review of plaintiff's account indicates an average monthly deposit of \$0.00, and an average monthly balance of \$0.00. Plaintiff cannot afford to pay any portion of the filing fee, and the Court will not assess a partial filing fee at this time.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it "lacks an arguable basis in either law or fact." Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose

of vindicating a cognizable right. Spencer v. Rhodes, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), aff'd 826 F.2d 1059 (4th Cir. 1987). A complaint fails to state a claim if it does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

The Complaint

Plaintiff brings this action under Bivens. Named as defendants are Lyle Henderson (United States Marshals Service), Eric Holder (Attorney General of the United States), the United States Department of Justice, and the United States of America.

Plaintiff states that he is bringing this action on behalf of himself and “all federal pretrial detainees in the Eastern District of Missouri.” Plaintiff alleges, in a conclusory fashion, that he is “being detained illegally and under cruel and unusual circumstances.” Plaintiff further alleges, “I feel pretrial detainees are being punished by cruel and unusual means.”

Discussion

The complaint is legally frivolous for several reasons. First, the complaint is wholly conclusory and fails to allege any facts, which if proved, would entitle plaintiff to relief. Second, there are no factual allegations against any of the individual defendants that would show that they violated any of plaintiff’s rights. Third, plaintiff

may not bring a federal civil action on behalf of other prisoners. And finally, the United States is entitled to sovereign immunity. As a result, the complaint will be dismissed pursuant to 28 U.S.C. § 1915(e).

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #6] is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff will not be ordered to pay an initial partial filing fee at this time.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

An Order of Dismissal will accompany this Memorandum and Order.

Dated this 18th day of December, 2009.

/s/ Jean C. Hamilton
JEAN C. HAMILTON
UNITED STATES DISTRICT JUDGE